Seconded by Mr. Prince.

Carried.

CIVIL COURTS REGULATION AMENDMENT BILL.

Mr. Thanu Pillai—At the last meeting, I obtained the leave of the Council to formally introduce the Bill, reserving for this meeting the discussion of its principle.

The object of the proposed measure is to afford relief to the Courts, which, under existing arrangements, are not able to keep pace with the advancing civil litigation. The volume of litigation has been increasing from year to year. In 1070, the total file of the Courts amounted to 30,019 suits which rose to 33,926 in 1071, 36,033 in 1072, and 43,186 in 1073. This was probably the high-water mark of civil litigation. In 1074, the file was 41,148 and in 1075, 39,602. There was of course a special cause—the operation of the Jenmi and Kudyan Regulation—which tended to swell the file in 1073 and 1074. But even if we exclude these years, the statistics above quoted show that the normal litigation of the State has advanced about 30 per cent during the last 6 years.

In 1897, the High Court drew the attention of Government to the state of litigation and suggested the raising of the small cause jurisdiction of the Munsiffs as the best means of affording relief to the Courts. But Government, while admitting that the figures furnished by the High Court established the necessity for giving the Courts some relief, thought that the rise in litigation might be temporary, and decided, therefore, to entertain an itinerant Munsiff, in addition to the one already appointed. This experiment has been given a fair trial, the number of itinerant Munsiffs having been increased to 3 in 1075. In the opinion of the High Court, the results have not been satisfactory; and they have again moved for a reconsideration of their proposal.

The recommendation made by the High Court is to raise the ordinary and small cause jurisdiction of all Munsiffs to 1000 and 50 Rs. respectively, and to invest the District Courts with original small cause jurisdiction in all suits for money or personal property ranging between 50 and 100 Rs. in value. Considering the powers exercised by similar classes of Courts in British India, the above proposals are certainly moderate; but, having regard to local conditions, it has been thought desirable to defer, for the present, the proposal to invest the District Courts with original small cause powers, and merely to increase their final appellate powers. This is a country of peasant proprietors, and an amount ranging from 50 to 100 Rs. would, in by no means a small proportion of cases, represent the aggregate wealth of families. The Council is, of course, aware that, in documents relating to movable and immovable properties, the consideration is very often described in chuckrams. Of the total number of documents registered in 1074, 37·6 per cent were below 50 Rs. in value, and 23·2 per cent were between 50 and 100 Rs. In other words, over 60 per cent of transactions in this country are concerning amounts not exceeding 100 Rs. The distance which poor ryots will have to travel, to seek relief from District Courts, if the latter are invested with original small cause jurisdiction, to the exclusion, in respect of such class of suits, of the jurisdiction of the local Munsiffs' Courts, and the inconvenience and expense to which they will be put, will be prohibitive. For these reasons, it has been decided to confine the present measure to enhancing the original jurisdiction of Munsiffs and the final appellate jurisdiction of District Courts.

It will be observed that the enhanced small cause and ordinary jurisdiction is not conferred by the Bill on all Munsiffs; but power is taken to invest particular Munsiffs with such powers. The real object of the measure is, as already observed, to afford relief to the Courts. An examination of the judicial statistics will show that, under existing jurisdictional arrangements, the devolution of work on the several Courts is unequal. Taking the figures for the Munsiffs' Courts for 1075, it is observed that, in one court the file (including ordinary and small causes) exceeded 3,000 suits, in 11 courts it exceeded 2,000 suits, in 5 courts it exceeded 1,500 suits, and in 2 courts it was below 1,000 suits. The file of the District Courts ranged from 428 to 113. Relief, therefore, is not required for all Courts. Again, it will

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not be denied that the summary procedure prescribed for the trial of small cause suits is not calculated to ensure as correct and satisfactory a finding as in ordinary suits, with the guarantees of an elaborate procedure laid down for their trial and the right which the aggrieved parties have of appeal in all cases to a superior tribunal. That the right of appeal is availed of by the parties even in cases of small value, is evident from the fact that out of 2,167 appeals preferred to the District Courts in 1075—448 or 20·7 per cent were in suits below 50 Rs. in value, and 1057 or about 49 per cent, in cases below 100 Rs. Small cause jurisdiction is an evil, though a necessary evil; and, in such cases, the safest course is not to go beyond the absolute necessity. An enabling law would, I think, best secure the object.

The principle is not novel. In British India all the District Munsiffs do not possess the same small cause powers. Such jurisdiction over 50 Rs. is conferred only on selected Munsiffs. In the Madras Presidency, in 1899, out of 118 District Munsiffs, only 11 exercised extended small cause powers up to Rs. 100 and 19 up to the value of Rs. 200. The remaining 88 Munsiffs had only small cause jurisdiction up to 50 Rs.

I think I need hardly say anything as to the other provisions of the Bill at this stage.

Mr. Kunhiraman Nair.—I beg to second the introduction of the Bill. It embodies a small instalment of judicial reform which has been under the contemplation of successive administrations ever since the year 1881, but which a too cautious policy has hitherto deterred the administration from attempting to carry out earlier. There is, at present, I believe, a consensus of intelligent public opinion as to the necessity and expediency of the proposed measure, and it is thought the time has come for the introduction of the reform. Some of the weak points of the system of judicial administration here, as noticed by those conversant with the systems prevailing here and in British India, are (1) the limited jurisdiction of the Munsiffs' Courts compared with those of the corresponding grades in the British service, and (2) the unlimited jurisdiction of District Courts, from the lowest figure above Rs. 500 up to any amount without limit, thus throwing the burden of the bulk of original jurisdiction upon the District Courts, which have, therefore, to be manned by more than one judge, and the consequent waste of time and working power. The main objects of the Bill are to remedy, to some extent at least, the above state of things, to promote the convenience of the public and to cheapen the cost of litigation, and these objects are sought to be attained in two ways:—

Firstly, by increasing the pecuniary limits of the jurisdiction of the Munsiffs in Regular suits from Rs. 500 to Rs. 1000,—the jurisdiction exercised by the Madras Munsiffs until 1873, or some 28 years back, when their jurisdiction was raised to Rs. 2,590.

Secondly, by enhancing the small cause jurisdiction of the Munsifs from Rs. 30 to Rs. 50, the maximum limit of the Madras Munsiffs' small cause jurisdiction being Rs. 200.

It is a well known saying that tardy and expensive justice is practically no justice, and it is, therefore, one of the paramount duties of the administration to see that all legitimate means are adopted for the speedy dispensation of justice, without subjecting suitors to the hardships, trouble, inconvenience and waste of time incidental to delays in the disposal of suits or other judicial proceedings. We have it from our judicial statistics that the civil litigation in the State has been steadily, and even rapidly, on the increase, so much so that the Courts find it difficult, despite their best and most strenuous efforts, to cope with the heavy and growing work, and to dispose of the suits and proceedings without delay and within a reasonable time. On comparing the files of the past 5 years, it is found that even leaving out of account the abnormal rise in litigation in the years 1073 and 1074, due to special causes, such as the influx of suits in consequence of the Jenmi and Kudiyan Regulation (V of 1071), there has been a steady advance of litigation from year to year. Against 956 O. S. and 2,018 A. S. in the District Courts and 18,585 O. S. and 14,385 Small Causes in the Munsifs' Courts in 1071, we had 1,247 O. S., 2,262 A. S. and 16 Small Causes under the Jenmi and Kudiyan Regulation in the former

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(District Courts), and 22,595 O. S. and 15,744 Small Causes in the latter (Munsiffs' Courts) in 1075. The arrears at the close of 1075 compared with those of 1071 exhibit an increase of 233 O. S., 284 A. S. and 7 S. C. in the District Courts and 2,436 O. S. and 333 S. C. in Munsifs' Courts. The expediency and necessity, in these circumstances, of adopting a measure calculated to check the evil of the undesirable prolongation of suits and other judicial proceedings, cannot but commend itself to all right-thinking men. The experiment tried of affording relief to Munsifs by the appointment of itinerant Munsifs has not been found a complete success, and the reduction and simplification of work, in the manner contemplated by the Bill, seems to be a step highly necessary in the interests alike of the public and of the over-worked District Judges and Munsiffs.

The enhancement of Munsifs' jurisdiction both in Regular Suits and Small Causes would afford great relief to the District Judges who will thereby be enabled to devote their time to the more important classes of suits and to Criminal work, and to dispose of them promptly and without delay, while the burden thereby thrown on the Munsifs would not be appreciably felt, as such suits transferred from the files of the District Courts will go not to one Munsif but to several among whom they will have to be distributed. From a comparison of the past five years statistics, it has been found that only 656 suits on an average would be transferred to the Munsifs' file and the addition would be only 31 suits per annum to each Munsif. To counterbalance this addition, the Bill proposes the investiture of enhanced summary powers of investigation on the Munsiffs, which will enable them to deal out prompt justice in petty cases in which complicated questions requiring lengthy investigations are not likely to arise. The schedule of exemptions attached to the Bill on the lines of the British Act is a sufficient guarantee for the exclusion from the summary jurisdiction of all cases of an important nature in which the monetary value may be less than 50 Rs. The extension of the Munsifs' summary powers in personal suits of between 30 and 50 rupees' value, forming an average of between 4,000 and 5,000 suits, calculated on the institutions of the past 5 years, means the saving of a lot of miscellaneous expenses to the parties and of the time that would be occupied, should the cases be tried and disposed of as Regular Suits. The commercial and trading classes, particularly in centres of trade, will be considerably benefited by the speedy disposal of petty cases, and the consequent facility afforded them for the prompt realization of their debts and demands. The enhancement of the limits of the Munsifs' ordinary jurisdiction from Rs. 500 to Rs. 1,000 would transfer, on an average calculated as stated above, between 600 and 700 suits to the Munsifs' courts. The parties in such suits, who have at present to proceed to the stations where the Zillah Courts are located, can resort to Courts nearer home and thus secure the attendance of witnesses, and themselves watch the proceedings at less cost and waste of time than they can, under the existing law.

The proposals embodied in the Bill are not altogether new. Started so far back as 1884, they were revived in 1888 with the result that the small cause jurisdiction of Munsifs was raised to Rs. 30 by Regulation III of 1066. The extension of Munsifs' summary powers was at one time opposed here, as it was in British India too, by some responsible officers; but I have not been convinced that the fears expressed by them were well founded. The satisfactory working of Small Cause Acts in British India of which also, grave fears were entertained at the outset, ought to allay any doubts or fears existing on the subject. I may quote here the observations of the late Sir William Hunter, the renowned statistician, as a member of the Viceregal Council, in connection with the Provincial Small Cause Courts' Bill—"This measure marks," he said, "the end of what may be termed the experimental stage of "Small Cause Court legislation in India. I well remember the apprehension which "was felt when those tribunals began to be generally introduced into the rural Dis- "tricts of Bengal. To most Judicial officers and to a large section of the public, it "seemed a perilous experiment, to dot the Districts with courts from whose decision "there was, in the majority of cases, no appeal. The system might work well enough "in large towns, it was said, under the safeguard of a vigilant public opinion, but it "was a dangerous one for remote country places. How completely these apprehen- "sions have been falsified, it is not needful for me to relate." These observations apply with full force to the conditions of this State. The enhancement of the Munsifs' Small Cause jurisdiction from Rs. 20 to 30 by Regulation III of 1066 has evi-

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dently wrought no hardship. Out of a total of 76,182 small cause decrees passed during the last 5 years (1071 to 1075), forming an average of 15,236 per annum, only 182 or on an average 36 per annum, that is less than one-fourth per cent, were sought to be set aside on revision by the High Court, and such applications were partially or wholly successful in only 37 of the cases, notwithstanding the fact that the High Court's power of revision under section 568 of the Civil Procedure Code is far more extensive than that of the High Courts in British India. No danger of any possible injustice need be apprehended by the denial of the right of Regular Appeals in the petty cases, so long as this extensive power of revision exists. I may observe that of the above total, 11,824 were decrees passed by the Courts in the Capital, in the case of the parties whereto, such deterring considerations against moving the High Court for revision, as distance and the expenses of journey did not exist. In the face of such results, there need be no fear that the enhancement of summary powers would be fraught with disastrous consequences.

The main point for consideration, is whether our Munsifs are competent, by character and qualification, to be vested with increased powers. The experience gained for the past several years, of the character and capacity of our Munsifs, as a body, has led the authorities directly supervising their work to consider the proposed step of enhancing their powers a safe one. The academic qualifications of our Munsifs generally are the same as those of their brethren in British India and in the sister Native States, and the rules under which they are recruited are calculated to secure trained lawyers of respectability. The administration too has, *for the last 18 years, at all events,* been doing all it could to improve the position of our Courts, and to attract men of character and ability to them, and have spared no pains or expense to raise the moral tone of the *personnel* of the lower Courts. There is thus no reason, now, why we should not gradually improve the status of Munsifs by increasing their powers and making them more useful to the public and the administration. The powers that are at present sought to be conferred on them are far below those vested in the Munsifs in British India and are not in excess of those vested in the Munsifs in the other native states.

The permissive character of the provisions of section 3 of the Bill does not affect the main principle of the Bill, and is best discussed and settled in the Select Committee with other amendments, bearing on the details of the measure, which I wish to propose hereafter to make the Bill more perfect. With these observations, I support the Bill.

The Council having affirmed the principle of the Bill, Mr. Thanu Pillai proposed that the Bill be referred to a Select Committee consisting of Messrs. Kunhiraman Nair, Kochukrishna Marar and the Mover, to report within three months.

Seconded by Mr. Poonen.

Carried.

Mr. Thanu Pillai.—I beg to propose that Mr. Kunhiraman Nair be added to the Select Committee on the Civil Procedure Code Amendment and Public Conveyances Bills.

The motion was put and agreed to.

Mr. Prince.—I beg to propose that Mr. Kunhiraman Nair may be added also to the Select Committee on the Evidence Bill.

The motion was put and agreed to.

The Council adjourned at 5–20 P.M.

K. KRISHNASWAMY RAO,
President.

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